

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA }
 }
VS. } CRIMINAL ACTION NO. H-03-235
EULALIO MORENO } CIVIL ACTION NO. H-08-2590
 }

OPINION & ORDER

Pending before the Court are Defendant Eulalio Moreno’s (“Moreno”) Motion to Vacate under 28 USC § 2255 (Doc. 91). Also before the Court is Magistrate Judge Stacy’s Memorandum and Recommendation (Doc. 101), recommending that the motion be denied, which faces no objections from Moreno.

Moreno makes no explicit claims in his motion to vacate. Instead he recounts the legal history of his sentencing and appeals. He ends with a summary that his attorney told him that a deadline to file a petition for *certiorari* was lost unless Moreno tried to persuade the court to let him file based on ineffective assistance of counsel. Doc. 92 at 4. The Magistrate took this to mean that Moreno was arguing that he received ineffective assistance of counsel when his counsel failed to file. This is a charitable construction as this was part of the motion’s “background” and, in fact, the motion lacked any “argument” or “authorities.” Even addressing the merits, this argument has none. *See United States v. Lauga*, 762 F.2d 1288, 1291 (5th Cir. 1985) (same argument was “totally devoid of merit”).

Consequently, having independently reviewed the applicable law and the record, this Court fully adopts the Memorandum and Recommendation. The Motion to Vacate (Doc. 91) is DENIED.

SIGNED at Houston, Texas, this 16th day of April, 2009.


Melinda Harmon
MELINDA HARMON
UNITED STATES DISTRICT JUDGE